vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6331 OF 1996

The Executive Engineer & Ors. ... Petitioners

V/s.

Shri Sandipani Dashrath Ghorpade & Anr. ... Respondents

Mr.Vijay Patil for Petitioner
Ms.Seema Sarnaik for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 1, 2006**

ORAL JUDGMENT:

. This Petition challenges the order of the Industrial Court passed in complaint (ULP) No.512 of 1989. By the impugned order, the Industrial Court has allowed the complaint filed under Item 6 of Schedule IV of the MRTU & PULP Act and has directed that the two complainants in the case be taken on the Converted Regular Temporary establishments from 1.1.985 and extended the benefits of permanency from that period. Arrears of wages were directed to be paid to the workmen within two months of the order.

2. Admittedly, the Petitioners' establishment is covered by the Kalelkar award of 1967. Under this award, an employee who completes 5 years of continuous service while working on a daily rated establishment, irrespective of the number of days of actual work rendered in each of the five years, he would be entitled

to the benefit of having his post converted to the post of Converted Regular Temporary establishment. The Respondent workmen were employed with the Petitioners as casual daily rated Mazdoors from 1.1.1980. They were continued in service till their services were terminated on 16.8.1985. The Labour Court at Pune decided that their termination from service was illegal and directed that they are entitled to reinstatement with full backwages and continuity of service. Accordingly, these workmen were taken back in service. However, the workmen were not taken on the CRT establishment as required under the Kalelkar award of 1967 although they had completed five years of continuous service. They therefore, filed a complaint under Item 6 of Schedule IV of the MRTU & PULP Act claiming benefits under the Kalelkar award which were applicable to the employees on the CRT establishment. They also contended that immediately on completion of 240 days in service, they were entitled to the benefits of permanency.

3. The Respondent in reply contended that the workmen had not put in 240 days in service and were therefore not entitled to permanency. It was pleaded that the workmen had no right to permanency after completion of 240 days in service. In fact, they were extended the benefits of Kalelkar award from 1986 and 1990 and therefore, they could have no grievance

whatsoever.

4. After evidence was led, the Industrial Court came to the conclusion that the workmen were not entitled to the benefits that they had claimed immediately on completion of 240 days. Instead the Industrial Court by applying the Kalelkar award, directed that the Respondent convert the post of the workmen to CRT employees and extend to them the benefits of permanency w.e.f. 1.1.1985. It is this decision which is impugned in the present Petition.

5. Mr.Patil, appearing for the Petitioners, contends that the complaint itself was not maintainable as it has been filed by two individual workmen. Section 21 stipulates a complaint under Item 6 can only be filed by a recognised union. This contention has not been raised at all by the Petitioners either in their written statement filed before the Industrial Court or in this writ petition. Therefore, there is no evidence on record whatsoever to indicate that there is a recognised union functioning in the establishment and that therefore such a complaint would not lie. It is well settled that if a recognised union is functioning in any establishment, a complaint under Item 6 of Schedule IV would not be maintainable if it is filed by an individual workman. However, this cannot lead to an

inference that where there is no recognised union, the individual workman cannot have any redressal for his grievance under Item 6 of Schedule IV of the MRTU & PULP Act. Such a complaint would lie if there is no recognised union as held in the case of **Bajirao Rajaram Patil v/s. The Maharashtra State Co-op. Bank Ltd. & Anr., 1997 (2) BCR 577**.

6. The submission of the learned Counsel that in view of the judgment in the case of *Pune Municipal Corporation & Ors. v/s.Dhananjay Prabhakar Gokhale,* **2006 (4) Mh.L.J. 67**, the complaint ought to have been dismissed is without merit. In that case the Division Bench has held that where a complainant claims a certain benefit, it is for him to plead and prove the factual matrix based on which he claims the benefit. It has been held that in the absence of relevant facts being pleaded by a complainant the reluctance on the part of the opponent to raise a particular plea would not enure to the benefit of the complainant. It was for this reason the Court was of the view that although the workers in that case had completed 240 days in service and were entitled to permanency they could get no relief as they had not pleaded that there were vacant posts available. In the present case, the Petitioner is seeking to oust the jurisdiction of the Industrial Court on the basis that the complaint is not maintainable.

This case has no application to the facts involved in the present Petition. The respondents in this case are seeking the benefits under the Kalelkar award under which they are entitled to be converted on to the CRT establishment. They had not claimed the status of permanent workmen but the benefits of permanency as available under the Kalelkar award.

7. In this view of the matter, the Industrial Court cannot be faulted for its findings. There is no perversity nor is there any error apparent on the face of the record. Hence, Petition dismissed. No order as to costs.